

**Board of Equalization Update
(The Board, Mr. Speed and Beyond)**

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Presented by:

**Timothy W. Boyer – Chief Counsel
California State Board of Equalization, Sacramento, CA**

**Warren Astleford – Senior Tax Counsel
California State Board of Equalization, Sacramento, CA**

**Charles J. Moll III - Partner
Morrison & Foerster LLP, San Francisco, CA**

**James E. Speed, Executive Director
California State Board of Equalization, Sacramento, CA**

Recent developments in the Property Tax Law

I. NEW AND RECENTLY AMENDED BOARD REGULATIONS

(Sales and Use Tax -- As of September 22, 2000)

A. Computer Programs

Regulation 1502, *Computers, Programs, and Data Processing*, was amended to include within the term “computer” manufacturing equipment that incorporates a computer and to clarify the application of tax to the sale of a prewritten program installed by a seller on the customer’s premises. *Title 18, California Code of Regulations, section 1502; effective January 29, 1999*

Regulation 1502 was also amended to clarify when the creation and transfer of the results of digitized pre-press instructions by computer diskette or other electronic storage media qualify as a custom computer program, the creation or transfer for consideration of which are excluded from the definition of “sale” and “purchase” under Revenue and Taxation Code section 6010.9. *Title 18, California Code of Regulations, section 1502; effective December 3, 1999*

B. Drugs and Medicines for Food Animals; Medicated Feed

Regulation 1506, *Miscellaneous Service Enterprises*, was amended to interpret and apply subdivision (e) of Revenue and Taxation Code section 6358 (oxygen used as a medicine) and Revenue and Taxation Code section 6358.4 (medicated feed and drinking water). *Title 18, California Code of Regulations, section 1506; effective July 9, 1998*

C. Out-of-State Construction Contractors

Regulation 1521, *Construction Contractors*, was amended to clarify that out-of-state contractors performing construction contracts in California, and United States construction contractors, are subject to the same tax requirements as in-state contractors. *Title 18, California Code of Regulations, section 1521; effective February 13, 1999*

Regulation 1521 was also amended to define “on-premise electric sign” and to provide that if a construction contract to furnish and install such an electric sign as an improvement to real property does not state the sale price of the sign, the measure of tax on the sale of the on-premise electric sign shall be 33% of the total contract price. *Title 18, California Code of Regulations, section 1521; effective May 18, 2000*

D. Claims for Refund—Partial Exemption for Manufacturing Equipment

Regulation 1525.2, *Manufacturing Equipment*, was amended to permit a manufacturer who made a purchase from an out-of-state retailer, but did not claim the partial use tax exemption allowed by this regulation, to file a claim for refund in the amount of the exemption he or she was entitled to claim. *Title 18, California Code of Regulations, section 1525.2; effective April 3, 1999*

E. Teleproduction or Other Postproduction Service Equipment

Regulation 1532, *Teleproduction or Other Postproduction Service Equipment*, was adopted to interpret and apply Revenue and Taxation Code section 6378 which provides a new exemption from state sales and use tax (but not for local sales and use tax or district transactions and use tax) for sales of tangible personal property to a qualified person to be used primarily in teleproduction or other postproduction services within the State of California. *Title 18, California Code of Regulations, section 1532; effective January 8, 2000*

F. Advertising Agencies, Commercial Artists and Designers

Regulation 1540, *Advertising Agencies, Commercial Artists and Designers*, was amended to: 1) generally treat advertising agencies as agents of their clients; 2) clarify when transfers of images on electronic media are nontaxable; 3) rebuttably presume that 75 percent of an advertising agency's lump sum charge for artwork is generally for nontaxable services; and, 4) clarify that tax applies to reproduction rights transferred within one year of the transfer of artwork in tangible form. *Title 18, California Code of Regulations, section 1540; effective April 23, 2000*

G. Printing and Related Arts

Regulation 1541, *Printing and Related Arts*, was amended to update definitions and explanations of printing technology and practices and to make a number clarifications, including: 1) when the creation and transfer of the results of digitized pre-press instructions by computer diskette or other electronic storage media qualify as a custom computer program, the creation or transfer for consideration of which are excluded from the definition of "sale" and "purchase" under Revenue and Taxation Code section 6010.9, 2) the application of tax to the sale and use of special printing aids, 3) that the alteration of film by a color separator is considered repair labor when the charge is \$100 or less and taxable fabrication when the charge is greater than \$100, and 4) the application of tax when artwork is included as part of composed type. *Title 18, California Code of Regulations, section 1541; effective December 3, 1999*

H. Envelopes

Regulation 1541.5, *Printed Sales Messages*, was amended to clarify that the sales of reply envelopes and other printed matter, such as order forms, incorporated into printed sales messages are exempt from the sales and use tax and to explain how the purchaser can act as the seller's agent when the envelopes or other printed matter are purchased from a third-party supplier. *Title 18, California Code of Regulations, section 1541.5; effective February 14, 1999*

I. Modular Furniture

Regulation 1583, *Modular Systems Furniture*, was adopted to interpret and apply the Sales and Use Tax Law to the sale and installation of modular systems furniture. *Title 18, California Code of Regulations, section 1502; effective December 3, 1999*

J. Wireless Telecommunication Devices

Regulation 1585, *Cellular Telephones, Pagers, and Other Wireless Telecommunication Devices*, was adopted to interpret and apply the Sales and Use Tax Law to sales of wireless telecommunication devices. *Title 18, California Code of Regulations, section 1585; effective February 11, 1999*

K. Animal Life, Feed, Drugs and Medicines

Regulation 1587, *Animal Life, Feed, Drugs and Medicines*, was amended to clarify that tax does not apply to the sale or use of cellulose casings used in the manufacture and production of processed meat products which are ultimately resold as, or incorporated into, feed for food animals or non-food animals which are to be sold in the regular course of business. *Title 18, California Code of Regulations, section 1587; effective October 1, 1999*

Regulation 1587 was also amended to interpret and apply Revenue and Taxation Code section 6358 which provides an exemption for oxygen that is administered to food animals for the primary purpose of preventing or controlling disease. Amendments were also made to incorporate into the definition of “food animals” certain Food and Agricultural Code provisions. *Title 18, California Code of Regulations, section 1587; effective May 18, 2000*

L. Non-Annual Plants

Regulation 1588, *Seeds, Plants, and Fertilizer*, was amended to incorporate statutory amendments to Revenue and Taxation Code section 6358, subdivision (c). The amendments added non-annual plants that produce food for human consumption to the exemption for sales and use of annual food plants. *Title 18, California Code of Regulations, section 1588; effective April 1, 1999*

M. Containers and Labels

Regulation 1589, *Containers and Labels*, was amended to: 1) clarify specific instances when a container is deemed “not customarily returned by the buyer,” 2) to clarify the application of the Sales and Use Tax Law to a lease that is a continuing sale and purchase, and 3) specify a minimum term upon which tax applies on the first lease. *Title 18, California Code of Regulations, section 1589; effective July 11, 1998*

N. Prescription Medicines et al.

Regulation 1591, *Medicines and Medical Devices*, was amended to: 1) reorganize the regulation, 2) provide a definition section which also incorporates definitions from the Business and Professions Code, 3) incorporate legal interpretations previously made on a case-by-case basis, and 4) provide that insulin blood monitoring equipment and glucose test strips qualify as medicines. In addition, certain subdivisions were deleted from Regulation 1591 and thereafter the subject matter of the deletions expanded and adopted into Regulations 1591.1, *Specific Medical Devices, Appliances, and Related Supplies*, 1591.2, *Wheelchairs, Crutches, Canes, and Walkers*, 1591.3, *Vehicles for Physically Handicapped Persons*, and 1591.4, *Medical Oxygen Delivery Systems*. *Title 18, California Code of Regulations, sections 1591, 1591.1, 1591.2, 1591.3, and 1591.4; effective March 10, 2000*

O. Aircraft Parts

Regulation 1593, *Aircraft*, was amended to incorporate statutory amendments to Revenue and Taxation Code section 6366 (lease receipts requirements in order to qualify as a common carrier); to provide specific examples of the types of flights that do and do not qualify as common carriage; and to make other clarifications. *Title 18, California Code of Regulations, section 1593; effective October 17, 1998*

P. Nonedible Cake Decorations

Regulation 1602, *Food Products*, was amended to provide that tax applies to the sales of nonedible cake decorations attached to a cake or bakery product when the value of the decorations is considered substantial compared with the entire charge for the cake or bakery product or if the price of the nonedible decoration is separately stated. *Title 18, California Code of Regulations, section 1602; effective June 12, 1999*

Q. Hotel Meals, Food to Go

Regulation 1603, *Taxable Sales of Food Products*, was amended to clarify when hotels serving complimentary meals are considered to be consumers of the meals and when they are considered to be retailers of the meals; to incorporate statutory amendments to Revenue and Taxation Code section 6359, subdivision (d)(6), related to sales of food on a “to-go” basis; and to make other clarifying changes. *Title 18, California Code of Regulations, section 1603; effective January 9, 1999*

R. Foreign Commerce

Regulation 1620, *Interstate and Foreign Commerce*, was amended to clarify that transactions involving imports are subject to sales or use tax, as appropriate, and to explain when tangible personal property is regarded as entering the “stream of commerce” for purposes of the foreign commerce exemption from sales and use tax. *Title 18, California Code of Regulations, section 1620; effective February 7, 1999*

Regulation 1620 was also amended to provide a test to determine when sales of vehicles, which are first functionally used outside of California, are deemed not to have been purchased for use within this state. *Title 18, California Code of Regulations, section 1620; effective February 23, 2000*

S. Packers and Shippers

Regulation 1630, *Packers, Loaders, and Shippers*, was amended to clarify that tangible personal property can be purchased for resale if it is purchased to physically incorporate it into the product being sold, such as wax and fungicide, post harvest protective shields, and protective coatings. The regulation was also amended to provide when tax does not apply to the sale or purchase of preservative products. *Title 18, California Code of Regulations, section 1630; effective October 27, 1999*

T. Leases of Tangible Personal Property

Regulation 1660, *Leases of Tangible Personal Property – In General*, was amended to clarify that personal property taxes are not included in the rental payments subject to tax when the lessor is a bank or financial corporation. *Title 18, California Code of Regulations, section 1660; effective May 25, 2000*

U. Leases of Mobile Transportation Equipment

Regulation 1661, *Leases of Mobile Transportation Equipment*, was amended to clarify that personal property taxes are not included in the fair rental value of mobile transportation equipment leased under defined conditions when the lessor is a bank or financial corporation. *Title 18, California Code of Regulations, section 1661; effective May 27, 2000*

V. Demonstration and Display

Regulation 1669, *Demonstration, Display and Use of Property Held for Resale – General*, was amended to clarify that personal property taxes are not included in the fair rental value of mobile transportation equipment leased while held for resale when the lessor is a bank or financial corporation. *Title 18, California Code of Regulations, section 1669; effective May 24, 2000*

W. Collection of Use Tax

Regulation 1684, *Collection of Use Tax by Retailers*, was amended to reflect an amendment to Revenue and Taxation Code section 6203(e) regarding trade show and convention activities by out-of-state retailers and to interpret and apply Revenue and Taxation Code section 7051.3 concerning exemption certificates for use tax direct pay permits. *Title 18, California Code of Regulations, section 1684; effective October 5, 1999*

X. Payment of Tax by Retailers

Regulation 1685, *Payment of Tax by Purchasers*, was amended to interpret and apply Revenue and Taxation Code section 7051.3 concerning exemption certificates for use tax direct pay permits. *Title 18, California Code of Regulations, section 1685; effective October 21, 1999*

Y. Successor Liability

Regulation 1702, *Successor's Liability*, was amended to clarify the circumstances under which a successor shall be relieved from a penalty originally imposed upon the predecessor. *Title 18, California Code of Regulations, section 1702; effective October 27, 1999*

Z. Interest and Penalties

Regulation 1703, *Interest and Penalties*, was amended to clarify and make specific when credit interest will be disallowed on overpayments. *Title 18, California Code of Regulations, section 1703; effective January 8, 2000*

AA. Relief from Liability

Regulation 1705, *Relief from Liability*, was amended to clarify when annotations or legal rulings of counsel constitute written advice. *Title 18, California Code of Regulations, section 1705; effective January 7, 2000*

BB. Place of Sale

Regulation 1802, *Place of Sale and Use for Purposes of Bradley-Burns Uniform Local Sales and Use Taxes*, was amended to clarify and make specific the allocation of revenue from sales of jet fuel under defined conditions. *Title 18, California Code of Regulations, section 1802; effective May 26, 2000.*

II. PENDING REGULATIONS AND CHANGES TO REGULATIONS (Sales and Use Tax -- As of September 22, 2000)

A. Architectural Services

Amendments to Regulation 1506, *Miscellaneous Service Enterprises*, propose to clarify that tax does not apply to a licensed architect's service and that the architect is the consumer of any tangible personal property transferred to its client as part of those services. Board adopted: June 15, 2000. Submitted to OAL: July 7, 2000. Approved by OAL: August 18, 2000

B. Partial Exemption for Manufacturing Equipment

Amendments to Regulation 1525.2, *Manufacturing Equipment*, propose to allow a qualified purchaser to refute provisions classifying certain items as "consumables" whether or not such items are expensed for franchise or income tax purposes. Authorized for Publication: August 9, 2000

C. Exempt Occasional Sales

Amendments to Regulation 1595, *Occasional Sales-Sale of a Business*, propose to recognize the first two sales in a series of sales requiring a seller's permit as exempt occasional sales. Public hearing: November 1, 2000

D. Interstate Commerce - Aircraft

Amendments to Regulation 1620, *Interstate and Foreign Commerce*, propose to clarify the criteria under which aircraft used in interstate commerce will be regarded as purchased for use in California. Public hearing: August 30, 2000

E. Returns, Defects and Replacements

Amendments to Regulation 1655, *Returns, Defects and Replacements*, propose to incorporate the "Lemon Law" provisions regarding automobiles and further clarify that the rule regarding optional warranties also applies when the property at issue is purchased out of state. Public hearing: November 1, 2000

F. Leases of Mobile Transportation Equipment

Amendments to Regulation 1661, *Mobile Transportation Equipment*, propose to deem that houseboats over 30 feet in length are MTE and not general tangible personal property. Public hearing: September 13, 2000

G. Suspended Corporations

Proposed Regulation 1702.6 implements existing Board practices and constructions regarding personal liability for sales tax on the part of responsible persons in the case of suspended corporations that continue to make sales after suspension and extend such practices to similar use tax liabilities. Adopted on July 26, 2000. Sent to OAL: August 18, 2000

H. Drop Shipments

Proposed Regulation 1706 interprets and implements Revenue and Taxation Code section 6007 and proposes that the retail selling price of drop shipped property generally is, in the absence of direct evidence, presumed to be cost plus 10 percent. Public hearing: September 13, 2000

I. Long Term Leases of Motor Vehicles

Proposed Regulation 1803.5 interprets and implements Revenue and Taxation Code section 7205.1 and proposes that the place of use for reporting local tax shall be the location of the California lessor's place of business, the vehicle seller's location, or the place where the lessee resides. Public hearing: September 13, 2000

III. NEW AND RECENTLY AMENDED BOARD REGULATIONS (Special Taxes -- As of September 22, 2000)

A. Motor Vehicle Fuel License Tax

Regulation 1108, *Qualified Distributor*, was adopted to explain the conditions a distributor must meet in order to be granted authorization to operate as a qualified distributor and, therefore, to be able to acquire motor vehicle fuel extax. The regulation clarifies the amount of security required to assure payment of the tax and that the security is a combination of a bond and real property. The regulation also sets forth the grounds and procedure for rescinding the authorization. *Title 18, California Code of Regulations, section 1108; effective September 25, 1999*

Regulation 1132, *Shipments Out of the State*, was amended to interpret and implement changes occasioned by (1) the repeal of Revenue and Taxation Code sections 7402, 7403, 7404, and 7407 that required a person exporting motor vehicle fuel to file a Certificate of Export with the Board, and (2) the amendment of Revenue and Taxation Code section 8105 extending the statute of limitations for filing claims with the State Controller for refund of taxes paid on the purchase of motor vehicle fuel that is exported. The amendment to the regulation clarifies the time for claiming a tax credit on tax-paid fuel that is exported, specifies when claims for refund must be filed with the State Controller, removes the requirement to file export certificates with the Board, and specifies the

documentation required to support an exemption or credit for exported tax-paid fuel. *Title 18, California Code of Regulations, section 1132; effective February 20, 2000*

B. Underground Storage Tank Maintenance Fee

Regulations 1201, 1212, 1213, 1220, 1248, and 1271 were adopted to implement the Underground Storage Tank Maintenance Fee.

Regulation 1201, *Definitions*, was adopted to make specific definitions for the purpose of the administration of the fee.

Regulation 1212, *Liability for Fee*, specifies the circumstances when an owner is liable for the fee and clarifies that the fee is due even if the petroleum was previously placed in the same or another tank, or the petroleum was placed in the tank in violation of an agreement between the owner and operator.

Regulation 1213, *Payment of Fee by Operator*, specifies the procedures for transferring a payment made by the tank operator to the tank owner's account, as well as the procedures for requesting that the Board send future notices and returns for the owner's account to the operator so that the operator can pay the fee on behalf of the owner.

Regulation 1220, *Exemption from Fee*, specifies the entities that are not subject to the fee.

Regulation 1248, *Relief from Liability*, specifies when a feepayer will be relieved of liability for the fee, including penalty and interest, because the feepayer relied on written advice from the Board pursuant to Revenue and Taxation Code section 50112.5. The regulation defines what constitutes "written advice" and clarifies when advice given by the Board in a prior audit constitutes "written advice."

Regulation 1271, *Records*, describes the records required to be kept by every feepayer liable for the payment of the fee, as well as the manner in which those records may be maintained, including automated accounting systems, microfilm, and microfiche. The regulation specifies that records must be maintained for at least four years and must be made available to the Board or its authorized representatives. The regulation also provides that the Board and a feepayer may enter into a record retention limitation agreement, and provides that penalties and other administrative action may result because of a feepayer's failure to maintain and provide the necessary records. *Title 18, California Code of Regulations, sections 1201, 1212, 1213, 1220, 1248, and 1271; effective January 8, 2000*

C. Use Fuel Tax

Regulation 1331.6, *Credit for Bad Debt Losses of Vendors*, was amended to explain that vendors and wholesalers are allowed to take a credit on their returns for accounts found to be worthless. References to wholesalers were deleted from the regulation since this tax no longer applies to wholesalers. *Title 18, California Code of Regulations, section 1331.6; effective September 29, 1999*

Regulation 1332, *Records*, was amended to describe the records required to be kept by every fuel user and every person dealing in, transporting, or storing fuel in this State. The regulation also explains the information necessary to support use fuel transactions recorded on an automated accounting system, and the conditions that must be met for reproduction on microfilm and microfiche to be considered records. Specific record requirements for use fuel users and vendors transactions are provided in the regulation.

The regulation specifies the period during which records must be retained and that the records must be made available to the Board or its authorized representative for examination. Regulation 1333 was repealed, and the language it contained concerning records of vendors, invoices, and receipts is incorporated into Regulation 1332. *Title 18, California Code of Regulations, section 1332; effective September 29, 1999*

D. Emergency Telephone Users Surcharge

Regulation 2401, *Definitions*, was amended to specifically define a “billing aggregator.” This amendment addresses a change in the way the telephone industry bills telephone charges to service users after deregulation of the telephone industry. *Title 18, California Code of Regulations, section 2401; effective May 27, 2000*

Regulation 2406, *Liability for Surcharge Remitted by Billing Aggregator or Billed Through Billing Agents*, was amended to address changes in the way the telephone industry bills telephone charges to service users after deregulation of the telephone industry. The regulation clarifies that the service supplier remains liable to collect and remit the surcharge, but authorizes the service supplier to contract with a billing aggregator to act as its agent in collecting and remitting the surcharge to the state. The regulation addresses the situation when a service supplier may use a billing aggregator for some, but not all, of its collections. The regulation authorizes the billing aggregator to file a single return each reporting period as agent on behalf of multiple service supplier clients, pay the surcharge with a single check, and provide, when requested by the Board, information about the individual service suppliers on whose behalf the return was filed. The service supplier remains responsible to ensure the proper amount of surcharge is remitted on its behalf to the Board. *Title 18, California Code of Regulations, section 2406; effective May 27, 2000*

E. Hazardous Substances Tax

Regulation 3000, *Generator of Hazardous Waste*, was adopted to interpret and explain the Hazardous Substances Tax Law as it applies to generators of hazardous waste and the hazardous waste generator fee. The regulation clarifies the statutory definition of a generator and explains how to determine the period during which waste was generated. The regulation also clarifies which entities and types of hazardous waste are exempt from the fee. *Title 18, California Code of Regulations, section 3000; effective October 8, 1999*

IV. RECENT CASES

A. Board Annotations

The Supreme Court held that annotations published by the Board in its *Business Taxes Law Guide* are not accorded the same weight as a regulation. The application of an agency interpretation to a particular case is judged by its thoroughness, validity of reasoning, and consistency with earlier and later pronouncements. *Yamaha Corp. of America v. State Board of Equalization* (1998) 19 Cal.4th 1

B. Gifts Sent Outside California

Upon remand by the California Supreme Court (see the decision cited above), the Court of Appeal concluded that the use tax applies when merchandise is delivered to a common carrier in California for delivery to a gift recipient in another state. The gift occurs in this state. *Yamaha Corp. of America v. State Board of Equalization* (1999) 73 Cal.App.4th 338

C. Interest is Not Tax

The Supreme Court held that payment of accrued interest on a tax deficiency is not required as a prerequisite to either an administrative refund claim or a court action for refund of taxes. The Court criticized the recent case of *Garg v. People ex rel. State Bd. Of Equalization* (1997) 53 Cal.App.4th 199, which concluded that prepayment of interest as well as tax was required, and held that neither the California Constitution (Article XIII, section 32) nor any legislative statute required prepayment of accrued interest as a condition to challenging tax assessments by way of a claim for refund of the tax paid. *Agnew v. SBE* (1999) 21 Cal.4th 310

D. Smog Impact Fee is Unconstitutional

The Board was included as a defendant with DMV and the State of California in a challenge to the motor vehicle smog impact fee imposed upon the registration of motor vehicles previously registered outside of California. The court of appeal held that the motor vehicle smog impact fee violates the commerce clause of the United States Constitution. The court of appeal also held that, because the motor vehicle smog impact fee was not a sales or use tax, placing the revenues from the fee into the general fund violated article XIX of the California Constitution. However, the trial court's remedy ordering the state to file claims on behalf of taxpayers paying the smog impact fee exceeded the trial court's jurisdiction. *Jordan v. Department of Motor Vehicles* (1999) 75 Cal.App.4th 449

E. Statute of Limitations to Collect Use Fuel Tax Runs from Final Determination of Tax Due

The 9th Circuit Court of Appeals held that an action for the collection of Use Fuel Tax is not time-barred if it is brought within three years after the determination by the Board becomes final that tax is owing. In this case, the Board had not issued a final determination with respect to Cool Fuel's unpaid Use Fuel Taxes. Therefore, the three-year limitations period had not begun to run and the proof of claim filed in the bankruptcy proceeding was not barred. In addition, the claim was ripe as an allowable contingent claim for debtor's pre-petition actions. *In re Cool Fuel, Inc. v. State Board of Equalization* (9th Cir. 2000) 210 F.3d 999

V. LEGISLATION (As of September 22, 2000)

A. AB 147 (Strom-Martin): Chapter 264, eff. 8/31/00

Authorizes the City of Sebastopol, subject to two-thirds voter approval, to levy a transactions and use tax at a rate of 1/8 percent for general revenue purposes.

B. AB 330 (Floyd & Lewis): Enrolled; Operative only if AB 2412 is signed.

Specifies that a person is not "engaged in business in this state" if their sole physical presence in this state is to engage in convention and trade show activities for 15 days or less, except as specified.

C. AB 511 (Alquist): Chapter 107, eff. 7/10/00

Among other things, provides a 5 percent state General Fund sales and use tax exemption beginning January 1, 2001, for purchases of tangible personal property, as defined, by eligible entities, as determined by the California Infrastructure and Economic Development Bank (CIEDB) Board within the Trade and Commerce Agency.

D. AB 599 (Lowenthal): Enrolled

Enables a retailer, including an affiliate of the retailer, or lender, under specified conditions, to claim a bad debt deduction for sales or use tax paid on transactions on accounts held by a lender that are determined to be uncollectible.

E. AB 809 (Lowenthal): Chapter 31, eff. 6/8/00

Established a refund program for the vehicle smog impact fee collected by the Department of Motor Vehicles (DMV) which was determined unconstitutional.

F. AB 1016 (Briggs): Enrolled

Provides certain protections of confidentiality to tax advice as between a taxpayer and any federally authorized tax practitioner, as specified.

G. AB 1784 (Lempert): Enrolled; Operative only if AB 2412 is signed.

Extends California's Internet Tax Freedom Act until January 1, 2005.

H. AB 1965 (Leach): Enrolled

Would prohibit any distribution or sale of the names and addresses of individuals who are registered with, or are holding licenses or permits issued by, the Board.

I. AB 2412 (Migden): Enrolled

Specifies that a retailer is presumed to have an agent in this state through use of a subsidiary, if the retailer sells substantially the same products under substantially the same business name, or if the California facilities or employees are used to promote sales by the retailer to California purchasers.

J. AB 2612 (Brewer): Enrolled

Specifies the Legislature's intent to revise the interest calculation provisions in the tax and fee programs the Board administers so that the same rate of interest is applied to both underpayments and overpayments of tax.

K. AB 2894 (Assem. Rev. & Tax.): Enrolled

Board-sponsored bill that: 1) allows a purchaser to issue an exemption certificate to a fuel vendor for an amount equal to the sales or use tax on the federal manufacturers' or importers' excise tax imposed on his or her qualifying and nonqualifying fuel purchases under specified circumstances, 2) authorizes the Board to prescribe a method to authenticate electronic returns and applications filed with the Board, 3) makes technical changes to conflicting laws providing a sales and use tax exemption for the sale or lease of aircraft by air common carriers, and 4) eliminates the requirement that settlement

disputes totaling less than \$5,000 for Sales and Use Tax administered by the Board be presented to the Attorney General for review. This bill would delegate this authority jointly to the Board's Executive Director and Chief Counsel.

L. AB 2898 (Assem. Rev. & Tax.): Enrolled

Board-sponsored bill that, among other things: 1) authorizes the Board to grant equitable relief to innocent spouses under procedures prescribed by the Board, 2) extends the sunset date for the managed audit program for an additional two years, 3) requires the Board to provide notice to purchasers who have incurred a use tax liability, as specified, of the Board's authorization to enter into installment payment agreements, 4) authorizes the Board to establish criteria to provide relief of the late payment penalty in a more efficient manner, 5) provides relief to a taxpayer whose employer withheld delinquent taxes or fees from the taxpayer's pay, but failed to remit the amounts to the Board, 6) provides relief of the late payment penalty in cases where the taxpayer enters into and successfully complies with an installment payment agreement, 7) prohibits the disclosure of confidential taxpayer information by tax preparers, and 8) changes the effective date for which reimbursement of fees and expenses may be awarded so that taxpayers may claim reimbursement commencing from the date the notice of determination, jeopardy determination, or denial of claim for refund is issued.

M. AB 2928 (Torlakson): Chapter 91, eff. 7/7/00

Creates the Traffic Congestion Relief Fund (TCRF). For the 2000-01 fiscal year only, requires that all sales and use tax revenue, derived at the 5 percent rate, resulting from the rate of tax imposed under the Motor Vehicle Fuel License Tax Law, the federal excise tax imposed on motor vehicle fuel, and from the sale, storage, use or other consumption of motor vehicle fuel in this state, be transferred quarterly to the TCRF.

Also requires the Board, in consultation with the Department of Finance, to estimate on a quarterly basis the amount transferred to the General Fund that is attributable to revenues associated with the sale of motor vehicle fuel.

N. SB 215 (Karnette): Chapter 32, eff. 6/8/00

Repeals the provisions in the Revenue and Taxation Code imposing a \$300 vehicle smog impact fee and appropriates \$665 million from the General Fund to enable the Department of Motor Vehicles (DMV) to initiate refunds of this unconstitutionally-declared fee.

O. SB 1933 (Vasconcellos): Enrolled

Creates the California Commission on Tax Policy in the New Economy to examine the impact of the Internet and other forms of electronic technology on the sales and use tax, telecommunications taxes, property taxes, and income taxes, as specified.

P. SB 1949 (Costa, et al.): Enrolled

Requires the Governor or his representative to enter into discussions with other states regarding the development of a multistate, voluntary, streamlined system for sales and use tax collection and administration, as specified.

Q. SB 2174 (Senate Rev. & Tax.): Chapter 256; eff. 1/1/01

Board-sponsored bill that: 1) authorizes the Board to prescribe a method to authenticate electronic returns and applications filed with the Board, 2) makes technical changes to conflicting laws providing a sales and use tax exemption for the sale or lease of aircraft by air common carriers, and 3) provides an exemption from the prepayment of sales tax on motor vehicle fuel if the gasoline is sold pursuant to a contract with the State of California or its instrumentalities.

VI. BOARD PROCEDURES AND SERVICES

A. Rules of Practice

Proposed amendments to Title 18 California Code of Regulations, sections 5010 - 5095 further simplify the rules for taxpayers and practitioners and consolidate the rules that are common to all tax programs. Set for discussion in the Customer Services and Administrative Efficiency Committee September 2000.

B. Internet (<http://www.boe.ca.gov>)

Virtually all statutes, regulations, pending regulations, forms, law guides and related information are now available on the Internet.

Recent Developments in the Property Tax Law

RULES	
<p>Rule 10. Trade Level for Tangible Personal Property - Amended</p> <ul style="list-style-type: none"> Staff reviewed and amended the rule to remove an outdated provision and to add more specific guidance in determining the appropriate trade level for valuation of personal property. The provision for trade level valuation of business inventory was entirely deleted because current law exempts business inventory from property taxation. The added language provides general valuation guidance using the trade level principle applicable to the following types of property: property leased for a period of six months or less, property leased for a period of more than six months, self-constructed personal property and personal property which the wholesaler or retailer has acquired from its inventory or stock for self-consumption or use, and personal property already in the possession of the owner. 	Effective May 25, 2000
<p>Rule 133. Business Inventory Exemption – Amended</p> <ul style="list-style-type: none"> Upon petition of two interested parties asking the Board to take regulatory action, and after a review of the factual basis for the request, the Board amended the rule by adding language providing that oak barrels used in the production of wine and brandy and which impart aroma- and flavor-enhancing chemicals to the wine or brandy are exempt as business inventories. Because the oak releases chemical ingredients into the wine or brandy, the barrels themselves are considered raw materials which become part of the goods held for sale in the ordinary course of business. When the barrels lose the capacity to release the chemical ingredients, their status as business inventory ceases. 	Effective July 26, 2000
Rule 137. Application of the Welfare Exemption to Property Used	Effective December

<p>for Housing – New</p> <ul style="list-style-type: none"> Upon petition of certain religious organizations asking the Board to take regulatory action, and after reviewing the evolution of applicable legal precedents, the Board adopted Rule 137 which revises past administrative practice in applying the welfare exemption to housing and related facilities. Specifically, the new rule provides that it is the use of the housing by the owner-organization, not the use by the occupant that is the determining factor. The occupant's use for personal or residential purposes is secondary to the organization's primary exempt purpose, and does not disqualify the property from exemption in whole or in part. Further the new rule provides that the terms "incidental to and reasonably necessary for" and "institutionally necessary" are identical and interchangeable. 	31, 1999
<p>Rule 153. Liquefied Petroleum Gas Tanks – New</p> <ul style="list-style-type: none"> Upon petition of a gas industry trade association requesting statewide uniformity in the proper trade level valuation of tanks, Rule 153 was adopted to identify the ultimate consumer of the tanks for assessment purposes. It is often difficult to determine whether the consumer of the tank is the consumer of the propane gas or the supplier of the gas. In addition, there are conflicting unpublished court decisions relating to the trade level at which these tanks should be valued and, thus, clarification was necessary as to the appropriate trade level valuation of these tanks. The rule provides specific criteria to be applied to make the factual determination in each situation and also defines the term "liquefied petroleum gas tank" to include related equipment, apparatus, gauges and meters attached to or installed on the tank. 	Effective May 28, 2000
Rules 301, 302, 305.1, 305.2, 305.5, 307, 308, 308.5, 308.6, 309,	Effective April 22,

<p>310, 311, 312, 313, 316, 317, 318, 319, 320, 321, 322, 323, 324, 325 and 326. Adoption, Amendment and Repeal of Local Equalization Rules. The significant changes are as follows:</p> <ul style="list-style-type: none"> • Rule 301 was revised to clarify that an appeals board may decide issues of classification of property, including classifications within the general classifications of real property, improvements, and personal property. The revision was the subject of dispute by some counties because such classifications may result in the property so classified being exempt from property taxation, and the rule provides that appeals boards have no jurisdiction to decide exemption issues. • Rule 305.2 was added and provides that boards of supervisors may establish and prescribe notice procedures for prehearing conferences. Prior to the rule, several counties had already conducted prehearing conferences, but all interested parties agreed on the need for specific rule authority requiring the adoption of local rules and procedures for such conferences. • Rules 308.5 and 308.6 were revised to apply disqualification procedures to hearing officers. • Rule 313 was revised to set forth evidentiary presumptions and to explain the distinction between and operation of the burden of production and the burden of proof in an appeals hearing. Several interested parties expressed concerns that some board members' failure to understand the application of burdens may result in a denial of due process. The amendments also clarify and update the presumptions provided by statute. • Rule 321 was revised to set forth the manner in which a board determines that an applicant has overcome the assessor's presumption of correctness. Interested parties had expressed concern that some boards were treating the presumption as evidence that lent greater weight to the assessor's factual evidence. The rule now expressly states that such a determination shall be made and that the presumption is not 	<p>2000</p>
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<p>evidence and may not be considered by the board in its deliberations.</p> <ul style="list-style-type: none"> • Rule 325 was revised to set forth in detail the time period and conditions under which a decision becomes final. Interested parties sought these changes because the time limitations periods for filing claims for refund and refund actions commence on the date that a decision becomes final. • Rule 326 was revised to provide that an appeals board may reconsider a decision under specified circumstances. Interested parties noted that the general prohibition against a board rehearing or reconsidering a decision should not preclude correction of clerical or ministerial errors or a hearing on an application that was denied for lack appearance. Such corrections do not involve a determination of the issues by the board and a hearing on a denied application is specifically authorized by Rule 313. 	
<p>Rules 305 and 306. Amendment of Local Equalization Rules</p> <ul style="list-style-type: none"> • Rule 305, subsection (e) was amended to grant appeals boards the discretion to permit amendment of an application after the filing date. Appellate court decisions interpreting Rule 305, have upheld the validity of subsection (e) which prohibits after the last day for timely filing any amendment requesting relief different than or in addition to relief originally requested by the application. Interested parties expressed concern that the provision denied due process to applicants who had inadvertently appealed the wrong value. Subsection (e) now allows but does not require an appeals board to grant a request for amendment if the request is made under certain specified conditions. • Rule 305, subsection (a) was amended to allow an agent's authorization to be submitted as a separate attachment to the application. Prior to the amendment, the rule was unclear as to 	<p>Effective June 30, 2000</p>

<p>whether the authorization was required to appear in the space provided on the face of the application form. Interested parties expressed concern over the administrative burden imposed on an applicant appealing multiple properties by requiring a separate authorization signature, usually by a corporate officer, on each application. Subsection (a) now permits the attachment of a photocopied authorization document and prescribes specific items of information to ensure the validity of the authorization.</p>	
<p>Rule 466. Valuation and Enrollment of Trees and Vines- Repealed</p> <ul style="list-style-type: none"> Staff determined that rule should be repealed to eliminate redundancy due to the adoption of statutory provisions. The provision in Rule 466 that trees and vines on restricted land are to be valued under the existing “use value” provisions became unnecessary by the addition of section 53 to the Revenue and Taxation Code which expressly states that provision. Furthermore, section 423 of the Revenue and Taxation Code has been amended to set forth more explicitly and in greater detail than Rule 466 the requirement that trees and vines planted on restricted land be valued without regard to Proposition 13. 	<p>Effective January 4, 2000</p>
<p>Rule 467. Taxable Possessory Interests – Repealed</p> <ul style="list-style-type: none"> Staff determined that the rule should be repealed to eliminate redundancy because its provisions have been supplanted by amendments to the series of rules governing changes in ownership and the general rule governing newly constructed property. Property Tax Rule 462.080, <i>Change in Ownership – Possessory Interests</i>, is both more specific and more up-to-date than Rule 467. Property Tax Rule 463, <i>Newly Constructed Property</i>, governs the treatment of all newly constructed property, including construction associated with taxable possessory interests in publicly owned land. 	<p>Effective December 29, 1999</p>

<p>Rule 470. Enforceably Restricted Property – Repealed</p> <ul style="list-style-type: none"> • Staff determined that rule should be repealed to eliminate redundancy and, to some extent, inconsistency between regulatory and statutory provisions. Certain statutory provisions governing the assessment of the types of property covered by this rule are sufficiently specific and make the rule unnecessary. Furthermore, more specific property tax rules address those areas in which statutory interpretation is necessary. 	<p>Effective January 12, 2000</p>
<p>Rule 905 Assessment of Electric Generation Facilities – New</p> <ul style="list-style-type: none"> • This rule was adopted to make specific the Constitutional authority of the Board to assess certain public utility properties following the restructuring of the electrical industry pursuant to Statutes 1996, Chapter 854, effective September 24, 1996. As the result of the legislation, representatives of several cities and counties and representatives of several public utilities inquired about the assessment of public utility properties under different suggested scenarios. Upon consideration of various possible alternatives, the rule, as adopted, provided that an electric generation facility shall be state assessed property only if (1) the facility was constructed pursuant to a certificate of public convenience and necessity issued by the California Public Utilities Commission to the company that presently owns the facility; or (2) the company owning the facility is a state assessee for reasons other than its ownership of the generation facility or its ownership of pipelines, flumes, canals, ditches, or aqueducts lying within two or more counties. 	<p>Effective November 27, 1999</p>

HANDBOOKS	
<p>AH 267, Welfare, Church, and Religious Exemptions</p> <ul style="list-style-type: none"> Update to comply with recent adoption of new rule 137 pertaining to property used for housing. Rule 137 was adopted to clarify how the welfare exemption from property taxation applies to property of qualified nonprofit organizations used for housing and related facilities. See Rule 137 above. 	August 2000
<p>AH 504, Assessment of Personal Property and Fixtures</p> <ul style="list-style-type: none"> Update to comply with regulatory changes regarding personal property reflected by revisions to Rule 10 and the adoption of Rule 153. 	June 2000
<p>AH 511, Assessment of Manufactured Homes</p> <ul style="list-style-type: none"> Revision of handbook that has not been updated since 1984. 	In progress
<p>AH 541, Assessment of Public Utilities</p> <ul style="list-style-type: none"> Revision of manual to reflect current law and valuation methods including state assessment jurisdiction, standard of value, the unit valuation concept, allocation of unitary value, and appeals of state assessments 	In progress
<p>AH 542, Assessment of Water Companies and Water Rights</p> <ul style="list-style-type: none"> The handbook has not been available since late 1980's. The revision will combine two handbook sections, water companies and water rights. 	In progress

SPECIAL TOPIC SURVEYS	
<p>Taxable Possessory Interests</p> <ul style="list-style-type: none"> The Board recognized the need for appraisal guidance in the assessment of taxable possessory interests because the existing manual first adopted in 1955 has not been updated since 1978. The survey reports the practices and procedures employed by county assessors when assessing possessory interests. Among the issues identified by the survey are: the need to improve reporting of creations, renewals, assignments and subleases of possessory interests; the need for statewide uniformity in supplemental assessment of possessory interests; assessor's change in ownership determination upon the renewal or extension of a possessory interest must comply with section 61; and short-term agreements for use of public facilities should be reviewed to determine whether they meet the tests for taxable possessory interests. 	April 2000
<p>Assessment Coordination Between Real Property and Business Property Divisions on Tenant Improvements</p> <ul style="list-style-type: none"> The survey was conducted to identify effective procedures of assessment coordination between real property and personal property divisions of assessors' offices, and to present staff's position regarding these procedures. Recommendations include establishing a comprehensive set of written procedures, use of inter-departmental memos for coordination, and use of notations on both the appraisal record and the business property file. 	December 1999
<p>Minimum Percent Good</p> <ul style="list-style-type: none"> The survey was conducted to identify current assessment practices concerning application of minimum percent good factors for computing assessed values of personal property and fixtures. Minimum percent good factors are used to estimate the lowest 	November 1999

<p>value of a property during its useful life by applying those factors to the replacement or reproduction cost new estimates in order to compute the fair market value of property as it reaches the end of its economic life. The survey recommends the use of minimum percent good factors based on adequate factual evidence with adjustments, if necessary, based on all available information.</p>	
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OTHER	
Assessment Appeals Manual, Update <ul style="list-style-type: none"> Update to comply with recent rule revisions regarding assessment appeals. 	September 2000
Guidelines for Assessment of Section 11 Properties <ul style="list-style-type: none"> Provide clarification and guidance in the assessment of taxable government owned property. 	May 2000
Publication 30, Residential Property Assessment Appeals, Update <ul style="list-style-type: none"> Update to comply with recent rule revisions regarding assessment appeals. 	March 2000
Form BOE 305 AH, Application for Changed Assessment, revision <ul style="list-style-type: none"> Update to comply with recent rule revisions regarding assessment appeals. 	March 2000

RECENT APPELLATE CASES

Exempt Business Inventory

Form letters of nonprofessional service enterprises, if delivered incidental to the rendition of the service, qualify as exempt business inventory, regardless of whether they are sent to a customer or to a third party designated by a customer. *Transworld Systems, Inc. v. County of Sonoma* (2000) 78 Cal.App.4th 713

Contamination to be Considered in Fair Market Value Determination

The fair market value of contaminated property, under Revenue and Taxation Code section 110, is the price at which an open market sale of the property would be consummated, considering the polluted condition of the property.

Mola Development Corporation v. Orange County Assessment Appeals Board No. 2 (2000) 80 Cal.App.4th 309

Rebuttable Presumption that Improvement Bond Amount is Included in Purchase Price

A 1998 amendment to Revenue and Taxation Code section 110, which added the rebuttable presumption that the amount of an improvement bond is included in the purchase price of a property, was a clarification of existing law and was applicable to applications for changed assessment pending as of the date of its enactment. *Huson v. County of Ventura* (2000) 80 Cal.App.4th 1131

Refund in Property Tax Suit Based Upon Amount Sought in Claim for Refund

Under Revenue and Taxation Code sections 5142 and 5143, a taxpayer who files a property tax refund action can recover no more than the amount it seeks in its underlying claim for refund.

Mission Housing Development Company v. City and County of San Francisco (2000) 81 Cal.App.4th 522

2000 PROPERTY TAXES LEGISLATION – STATUS REPORT				
Bill	Status	Effective Date	Description	
AB 659* (Wiggins)	Chapter 601	09/24/00	<p>Welfare Exemption – Low Income Housing. Would reinstate eligibility to property qualifying on the sole basis that the property provides housing to low-income residents for property wholly owned by non-profits, as specified</p> <p>Low Income Housing Projects - Indian Tribal Owned. Would allow a partial exemption based on the percentage of low-income units to total units as long as at least 30 percent of the housing units are for low-income tenants.</p> <p>Pre-1910 Historic Wooden Vessels. Would exempt a refurbished original, wooden inland waters vessel of 47 feet or larger, built in California during or prior to 1910, that has continuously thereafter remained in California waters, and has been designated a California State Historical Landmark and that is part of a maritime museum.</p>	
AB 1036* (Wesson)	Chapter 602	01/01/01	<p>State-County Property Tax Administration Loan Program. Extends the sunset date of the program that loans monies to counties to assist in the administration of the property tax system to include the 2001-2002 fiscal year.</p>	
AB 1790 (Wiggins)	Chapter 272	01/01/01	<p>Grapevines; Pierce’s Disease and Phylloxera – Similar Type Requirement. Would eliminate the requirement that grapevines removed due to Pierce’s Disease or phylloxera be of a “similar type” to qualify for base year value transfers since replanted vines may need to be of a different variety that is not vulnerable to these diseases.</p> <p>Density. Would permit that, if the grapevines are replanted at a greater density, a base year value transfer may be made but would limit the base year value transfer to an equivalent number of replacement grapevines. That portion in excess of a substantially equivalent amount would be assessed at current market value.</p>	
AB 1966 (Wiggins)	Chapter 406	09/12/00	<p>Possessory Interests – Supplemental Assessments. Would exclude from supplemental assessment newly created taxable possessory interests, established by month-to-month agreements in publicly owned real property, having a full cash value of fifty thousand dollars (\$50,000) or less.</p>	

2000 PROPERTY TAXES LEGISLATION – STATUS REPORT				
Bill	Status	Effective Date	Description	
AB 1984* (Zettel)	Chapter 441	01/01/01	Personal Property Tax Rebate – San Diego Telecommuting Center. Would allow the San Diego County Board of Supervisors to pay the owner of a telecommuting center property the county's share of the property taxes paid on tangible personal property.	
AB 2092* (Reyes)	Chapter 575	01/01/01	Disabled Veterans' Exemption - Retroactive Exemptions. Would permit the disabled veterans' exemption to be granted retroactively for property for which the exemption would have been available but for the taxpayer's failure to receive a timely disability rating from the United States Department of Veterans Affairs.	
AB 2335* (Maldonado)	Chapter 332	08/07/00	Boundary Changes - City of Santa Maria. Extends a deadline for the City of Santa Maria to file their maps with assessors and the Board of Equalization to December 31, 1999.	
AB 2562 (Brewer)	Enrolled	Upon Chaptering	Disabled Veterans' Exemption - Retroactive Exemptions. Would permit retroactive exemptions, at 85%, for prior tax years for any eligible person who did not file a claim in that tax year. Would increase the amount of the partial exemption granted on claims that are filed late, but before December 10th of the current tax year, from 80% to 90% (§276) Portability. Would immediately terminate and transfer the exemption from one home to another. (§276.2, §276.3)	
AB 2612* (Brewer)	Chapter 607	01/01/01	Intercounty Pipeline Rights-of-Way. Would extend to January 1, 2011 the agreement reached in 1996 between county assessors and intercounty pipeline rights-of-way owners to set forth an assessment methodology used to determine the value of intercounty pipeline rights-of-way for the 1984-85 through 2000-01 tax years.	
AB 2891 (Assembly Revenue & Taxation Committee)	Enrolled	01/01/01	Statute of Limitations – Escape Assessments. Would restore a limitation on the number of escape assessments that may be levied for prior tax years, except in cases of fraud or involving property owned by a legal entity in which a change in ownership statement was not filed. (§§75.11 and 532). State Assessee Appeals - Filing Dates. Would simplify the petition filing deadlines for appeals of assessments and allocations of state-assessed properties. These provisions would establish an appeal deadline that is date certain, eliminating a confusing two-part calculation to establish the filing deadline, and also eliminating potential confusion or	

2000 PROPERTY TAXES LEGISLATION – STATUS REPORT				
Bill	Status	Effective Date	Description	
			<p>dispute over precisely when a filing period calculation commences. (§§731, 732, 746, 758, and 759)</p> <p>Supplemental Assessments - Exemptions. Would restores language that was inadvertently deleted by SB 2237 (Stats. 1998, Chap. 591) related to permitting a partial exemption to be granted on late filed claims for the veterans', homeowners', and disabled veterans' exemptions on a supplemental assessment. (§75.21)</p>	
AB 2898 (Assembly Revenue & Taxation Committee)	Enrolled	01/01/01	<p>Additional Taxpayers' Bill of Rights. Among other things, for the Timber Yield and Private Railroad Car tax programs, this Board-sponsored bill would 1) authorize the Board to establish criteria to provide relief of the late payment penalty in a more efficient manner, 2) provide relief to a taxpayer whose employer withheld delinquent taxes or fees from the taxpayer's pay, but failed to remit the amounts to the Board, 3) provide relief of the late payment penalty in cases where the taxpayer enters into and successfully complies with an installment payment agreement, 4) prohibit the disclosure of confidential taxpayer information by tax preparers, 5) change the effective date for which reimbursement of fees and expenses may be awarded so that taxpayers may claim reimbursement commencing from the date the notice of determination, jeopardy determination, or denial of claim for refund is issued, 6) suspend the statute of limitations on filing refund claims during periods of disability, and 7) require the Board to provide annual statements summarizing the payment and liability information to taxpayers who have entered into installment payment agreements.</p>	
SB 383 (Haynes)	Enrolled	Upon chaptering	<p>Proposition 90/110 Base Year Value Transfers Provides that where intercounty base year value transfers were erroneously granted by the assessor after the county's ordinance had expired, no escape assessments for prior years taxes will be levied after the transfer is revoked. (Riverside County)</p>	

2000 PROPERTY TAXES LEGISLATION – STATUS REPORT				
Bill	Status	Effective Date	Description	
SB 1362 (Poochigian)	Enrolled	Upon Chaptering	<p>Disabled Veterans’ Exemption –</p> <p>Low Income Threshold. Would raise the low income threshold to \$40,000 and provide for automatic annual increases in the amount. (§205.5)</p> <p>Exemption Amounts Simplified. Would delete the multiple levels of exemption for disability type. (§205.5)</p> <p>Blindness. Would update the definition of blindness. (§205.5)</p> <p>Retroactive Exemptions for Prior Tax Years . Would permit partial retroactive exemptions for any eligible person who did not file a claim, and permit full retroactive exemptions for veterans awaiting a disability rating, grant the exemption retroactively, subject to the four year statute of limitations for refunds, for those did not apply because they were awaiting a disability rating from the federal government (presently the exemption is available on a prospective basis) (§276, §276.1)</p> <p>Portability. Would immediately terminate and transfer the exemption from one home to another. (§276.2, §276.3)</p>	
SB 1417 (Wright)	Chapter 417	01/01/01	<p>Proposition 60/90/110 Rescissions. Would require the assessor, upon a taxpayer’s request, to rescind the once in a lifetime base year value transfer for a person over the age of 55 years if the home was vacated within 90 days after the claim was filed. (Affects Riverside County)</p> <p>Intercounty Ordinances. Would permit intercounty base year value transfers to be granted prospectively in counties that change the effective date of their ordinance where the period for filing a timely claim would have otherwise expired. (Affects Ventura County)</p>	
SB 1664 (Karnette)	Chapter 60	07/03/00	<p>Property Tax Assistance Program (Franchise Tax Board) – “One Time Property Tax Rebate” Provision. Provides a one-time 150 percent increase in property tax assistance payments for low-income senior citizens and disabled individuals for the 2000-01 fiscal year.</p>	
SB 1844* (Kelley)	Chapter 613	01/01/01	<p>Mandatory Audit Threshold. Would increase the threshold level that requires the assessor to audit the books and records of a business once every four years from \$300,000 to \$400,000 worth of business property holdings (trade fixtures and business tangible personal property).</p>	

2000 PROPERTY TAXES LEGISLATION – STATUS REPORT				
Bill	Status	Effective Date	Description	
SB 1933* (Vasconcellos)	Chapter 619	01/01/01	California Commission on Tax Policy in the New Economy. Would create the California Commission on Tax Policy in the New Economy to examine the impact of the Internet and other forms of electronic technology on the sales and use tax, telecommunications taxes, property taxes, and income taxes, as specified.	
SB 2084 (Polanco)	Enrolled	Upon Chaptering	Commercial trailers and semitrailers. Would ensure that commercial trailers and semitrailers would not become subject to taxation under property tax law once they are no longer subject to the vehicle license fee.	
SB 2170 (Senate Revenue and Taxation Committee)	Enrolled	01/01/01	<p>Private Contractors – Would establish safeguards to ensure the confidentiality of taxpayer confidential information when consultants are hired by county assessors to perform appraisal work. (§674)</p> <p>Statute of Limitations – Escape Assessments. Would restore a limitation on the number of escape assessments that may be levied for prior tax years, except in cases of fraud or involving property owned by a legal entity in which a change in ownership statement was not filed. (§§75.11 and 532).</p> <p>State Assessee Appeals - Filing Dates. Would simplify the petition filing deadlines for appeals of assessments and allocations of state-assessed properties. These provisions would establish an appeal deadline that is date certain, eliminating a confusing two-part calculation to establish the filing deadline, and also eliminating potential confusion or dispute over precisely when a filing period calculation commences. (§§731, 732, 746, 758, and 759)</p> <p>Supplemental Assessments - Exemptions. Would restores language that was inadvertently deleted by SB 2237 (Stats. 1998, Chap. 591) related to permitting a partial exemption to be granted on late filed claims for the veterans', homeowners', and disabled veterans' exemptions on a supplemental assessment. (§75.21)</p>	
SB 2195 (Soto)	Enrolled	Upon Chaptering	Disabled Veterans' Exemption – Would delete the sunset date reducing exemption amounts scheduled to be reduced effective January 1, 2001.	

Recent Developments in:

Settlements

Business Tax Decisions

Franchise Tax Decisions

Memorandum

To: Tax Policy Conference Participants

From : Timothy W. Boyer
Chief Counsel

Subject: **Board of Equalization's Administrative Settlement Program
Fiscal Year End Report**

This report is on the Settlement Program's fiscal year ended June 30, 2000. This is the first full fiscal year following the program's February 1999 reorganization in the Legal Division. The following highlights significant achievements.

Increased Production

During the fiscal year ended June 2000, the number of cases settled increased 106%, from 151 in 1999 to 312 in 2000. Cases completed, which includes cases considered by settlement staff but not settled as well as cases settled, increased 55%, from 433 in 1999 to 669 in 2000.

Cases settled during the 2000 fiscal year involved liabilities totaling \$42.3 million, of which \$38.1 million was in dispute. \$27.4 million, an average of 62 percent of disputed amounts, was sustained in settlement. For comparison, during the 1999 fiscal year, cases settled involved liabilities totaling \$31.7, of which \$22 million was in dispute and \$14.4 million, or 65 percent of disputed amounts, was sustained in settlement.

Faster Case Completion

During the 2000 fiscal year, settlement staff reduced elapsed time from the receipt of a taxpayer's settlement proposal to the beginning of negotiations to three or four months, down from nine months or more when the program reorganized in 1999. The time required to complete a case for Attorney General and Board consideration fell to nine months or less from receipt of a settlement proposal, down from twelve months or more in 1999. Enrolled legislation, effective January 1, 2001, authorizes simplified processing of settlements involving small reductions in Sales and Use Tax liability. This authority should facilitate even faster case completion.

Case completions in the last year have eliminated the Settlement Program's backlog of aged cases. Settlement inventory at the end of the 1999 fiscal year was 478 cases, of which 358 were waiting to be worked by a settlement officer. In contrast, inventory at the end of the 2000 fiscal year was 316 cases, of which 196 were waiting to be worked. This reduced level of unworked inventory enabled staff to meet and often exceed the Settlement Program's fiscal year 2000 goal of completing cases within nine months.

Customer Satisfaction

Although not quantified, in the past year positive comments from a wide range of customers and increased participation in the settlement program by major tax law firms suggest increased customer satisfaction with the Settlement Program.

State Board of Equalization, Legal Division, Appeals Section
Business Taxes Board Memorandum Opinions
September 1999 – August 2000

The Appeals Section, among its other responsibilities, presents business taxes petitions and claims for refund to the Board members at Board hearings. The Board members hold these hearings when taxpayers do not agree with the Appeals Section's decisions and recommendations. If the Board members decide a case and view the case as precedential or significant, they will direct the Appeals Section to draft memorandum opinions for the Board members to adopt and publish.

Since September 1999, the Board members have adopted memorandum opinions in six cases, five Sales and Use Tax Law cases and one Insurance Tax case.

They are:

- Bombardier, Inc., September 1, 1999
- Scholastic Book Clubs, Inc., October 7, 1999
- National Steel and Shipbuilding Co., November 19, 1999
- ReliaStar Insurance Co., April 6, 2000
- Hewlett Packard Co., June 15, 2000
- John Chris Mogannam, August 10, 2000.

In the Bombardier case, claimant sold 16 rail passenger cars to the North San Diego County Transit Development Board (NTCD), a public agency that provides bus and rail mass transportation services in the San Diego area. The cars were for use on the "Coaster" commuter train operating between Oceanside and San Diego on track that was partially owned by NCTD. Other interstate passenger and freight trains also use the track.

The cars were manufactured outside of California and delivered in California by common carrier. Claimant paid use tax to the Board and filed a claim for refund. The Board concluded that the purchases and sales of rail cars qualify for exemption under Revenue and Taxation Code section 6352, which allows exemption for tangible personal property that this State is prohibited from taxing under the laws of the United States. Federal law (the "4-R Act", 49 U.S.C. section 11501 and former section 11503(b)) prohibits state taxation "that discriminates against a rail carrier providing transportation subject to the jurisdiction of [the Interstate Commerce Commission or the Surface Transportation Board]."

In the Scholastic Books case, a mail order book seller sold books to students through teachers who acted as the seller's agents. The seller was liable for collection of use tax on its sales of bonus items to the teachers for classroom use. However, the seller was also entitled to an equal offsetting cash discount on those sales. The bonus items sold

were premium merchandise, not compensation to the teachers, pursuant to Title 18, California Code of Regulations, section 1671.

In the National Steel and Shipbuilding case, petitioner/claimant is an operational shipyard in San Diego, California, which builds, converts and repairs ships for the United States Navy. Its contracts with the U.S. Navy are fixed-price contracts and contain the Payments clause of Department of Defense Federal Acquisition Regulation Supplement (DFARS) 252.217-7007. This clause references DFARS 252.217-7006. The issue presented was whether, when read together, these two sections pass title of overhead materials to the U.S. Navy upon receipt of a progress payment. Petitioner/claimant's overhead materials consist of nuts, bolts, paint, and office supplies.

The Board concluded that when the government reimburses petitioner/claimant for an item including overhead materials, the government retains title to that item. The progress payments made to petitioner/claimant under DFARS 252.217-7007 include costs for both direct and overhead materials which are to be used in repairing a ship. Consequently, these two clauses apply to overhead materials and title to these overhead materials passes on payment of the progress payments.

In the ReliaStar Insurance case, management fees and surrender charges, which are imposed by an insurer against the contract value of a variable life insurance policy, do not constitute "gross premiums" subject to insurance tax.

In the case of variable annuity policies for which an insurer has elected to be taxed on a "front-end" basis, management fees and surrender charges imposed by an insurer against the contract value also do not constitute "gross premiums" subject to tax.

In the case of variable annuity policies for which an insurer has elected to be taxed on a "back-end" basis, the measure of gross premiums subject to tax includes both the contract value which is applied to the purchase of the annuity, as well as any management or administrative fees which may have been charged against the contract value prior to the purchase of the annuity.

In the Hewlett Packard case, claimant, a computer manufacturer, donates sophisticated computers or scientific equipment to educational institutions and other qualified nonprofit organizations located both in California and out of state. Claimant's gift documents include a provision which states that title to the donated property does not pass to the out-of-state donee until delivery by common carrier and that claimant retains the ability to recall the gift before it reaches the out-of-state destination. The agreement between claimant and its donees includes warranties, which become effective upon delivery to, and acceptance by, the donee. Also, claimant does not take an income tax deduction until the donee receives the gifts. Thus, the gift was made out-of-state, and the gift is not subject to tax. (Rev. & Tax. Code, § 6009.1.)

However, when the risk of loss and damage pass to the donee at claimant's California plant, a taxable use is made in this state and tax applies with respect to those donations. (Cal. Code Regs., tit. 18, § 1670.)

In the Mogannam case, Revenue and Taxation Code Section 6363 may be applied to exempt meals provided by a third party hired by the school to operate a cafeteria on the school's premises. The exemption will apply when the facts show that the school was in fact furnishing the meals to the students by hiring a third party to sell the meals using the school's facilities.

Franchise and Income Tax Appeals

Formal Opinions:

The Board of Equalization (the Board) acts as an administrative appeal agency for taxpayers who disagree with a determination by the Franchise Tax Board (FTB). The majority of the decisions rendered by the Board are summary decisions which bind the taxpayer and the FTB, but which are not intended to be relied in subsequent proceedings. The Board also issues formal precedential opinions which are intended to be relied by all taxpayers appearing before the Board and which generally represent the Board's more significant legal determinations. Following is a brief discussion of the formal opinions adopted by the Board in the past year.

The legislature recently amended Revenue and Taxation Code section 19104 to expressly allow the Board of Equalization to consider appeals requesting an abatement of interest on FTB determinations. Consistent with that legislative change, the Board has issued formal opinions setting forth the proper procedures to file a claim for abatement of interest with the FTB, and if that claim is denied, to pursue an appeal with the Board. In the Appeal of Ernest J. Teichert (99-SBE-006), and the Appeal of Michael and Sonia Kishner (99-SBE-007), both decided on September 29, 1999, the Board, discussed the procedures set forth by the new provisions of Section 19104, formally abrogated its previous position not to consider interest abatement requests and set forth a definition for the "ministerial acts" which might establish a basis for relief under the statute. This past summer, the legislature further amended section 19104 so as to allow a taxpayer to dispute both the underlying tax and any accrued or accruing interest as part of the same appeal.

In the Appeal of John Manter (99-SBE-008), decided on December 9, 1999, the Board considered whether California-source income of an S corporation passed through to a nonresident is subject to California tax. Although the opinion recognized Revenue and Taxation Code section 17952 which specifies that non-resident income from intangibles is not taxable by the state, the Board concluded that the taxpayer's income was taxable as California source income. The Board reached this conclusion based on the state's conformity to the federal S corporation tax rules, state legislation which required nonresident S corporation shareholders to consent to the taxing jurisdiction of the state and based on similar treatment of partnership income.

In the Appeal of Consolidated Freightways (2000-SBE-001), decided on September 14, 2000, the Board considered whether income generated by investment funds could be considered business income. In this case, the

taxpayer sold one of its subsidiaries and invested the proceeds from that sale while it sought to acquire a replacement subsidiary. Eight years later, after numerous inquiries concerning acquisition targets and some failed acquisition attempts, the taxpayer used the proceeds from the original sale to purchase a suitable replacement company. Based on the unique facts of the case, the Board concluded that the investment income generated by the original sale proceeds should be deemed business income rather than nonbusiness income.

Pending Matters:

The Board is considering the issuance of two more formal opinions, but as of this date, the Board has not yet approved these written opinions. By way of background, after the oral hearings on these matters, the Board directed staff to prepare written formal opinions sustaining the taxpayers.

In the Appeal of Helmi A. Hisserich (Case No. 89002469560), the taxpayer sought to qualify for head of household filing status on the basis that she supported her same-sex domestic partner and a daughter born to that partner by means of artificial insemination during the relationship. Based on comments made at the hearing, it appears that the Board found in favor of the taxpayer on the basis that the taxpayer and her partner intended to conceive and parent the child as part of their ongoing relationship.

In the Appeal of Yamaha Motor Corp., USA (Case No. 89002467500), the taxpayer disputed an assessment of tax on “profits” from intercompany inventory sales on the basis that the intercompany seller was no longer part of the combined reporting group following a water’s edge election. At the hearing, the FTB argued that those “profits” should be eliminated from the combined report and that the intercompany buyer should assume a transferred basis for the acquired inventory, and the taxpayer argued that the intercompany buyer should reflect that inventory at its cost basis consistent with Generally Accepted Accounting Principles. Based on Board comments at the hearing, it appears that the Board ruled in favor of the taxpayer on the basis that the FTB had failed to issue any regulatory guidance on this question even though the water’s edge statute had been in place for some fifteen years.